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In re Application of :
OSMAN et al. :
U.S. Application No. 10/538,632 :
PCT No.: PCT/IB03/05938 :
It. Filing Date: 10 December 2003 :
Priority Date: 12 December 2002 :
Attorney Docket No.: PHUS020557 :
For: PRESERVING LINEARITY OF AN :
ISOLATOR-FREE POWER AMPLIFIER :
BY DYNAMICALLY ADJUSTING GAIN :
AND PHASE :

DECISION ON PETITION

This decision is in response to "Petition to File Application of Behalf of Co-Inventor Who Is Unavailable under 37 CFR 1.47(a)" filed 09 February 2006 to accept the application without the signature of joint inventor, Saleh Osman.

BACKGROUND

On 10 December 2003, applicants filed international application PCT/IB03/05938 which claimed a priority date of 12 December 2002. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 15 June 2005.

On 10 June 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and a preliminary amendment.

On 08 December 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 09 February 2006, applicants filed a petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17, (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the nonsigning joint inventor. Items (1), (3) and (4) have been satisfied.

As to item (2), petitioner states that Saleh Osman cannot be found or reached after diligent effort. Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

A review of the present petition reveals that petitioner has not provided an acceptable showing that a diligent effort was made to locate the nonsigning inventor, Saleh Osman. The declaration of Dicran Halajian states that he attempted to contact Saleh Osman by Federal Express and all attempts were unsuccessful. However, no documentary evidence to support the failed attempts were provided with the present petition. Further, the multiple mailings to the nonsigning inventor's last known address does not constitute a "diligent" effort to locate the nonsigning inventor(s). Applicant must show that alternative means were employed, such as a search of telephone and/or Internet directories, in an attempt to locate Saleh Osman. As stated above, copies of documentary evidence such as internet searches, certified mail return receipt, cover letter of instructions, telegrams, etc., should be supplied by a person having firsthand knowledge of the facts. All documents should be translated into English.

For the reasons stated above, it would not be appropriate to accept the application without the signature of Saleh Osman under 37 CFR 1.47(a) at this time.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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